MONTANA LEGISLATIVE HISTORY

Chapter 320 19 95

Bill H 9 S _____ Original bill & history ____C

H. Committee on Labor and Employment Relations		S. Committee on Labor and Employment Relations	
Hearing Date(s) Jan 10	✓C	Hearing Date(s) Feb 03	✓C
Jan 12	✓C	Feb 05	✓C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Jan 12	✓C	Feb 05	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 9

INTRODUCED BY STOLTZ, BRADLEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MATERNITY LEAVE TO PUBLIC AND PRIVATE EMPLOYEES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. (1) "Commissioner" means the commissioner of labor and industry.

(2) "Employer" means any public or private employer.

Section 2. Denial of maternity leave unlawful. (1) It shall be unlawful for an employer, by himself or his agent,

(a) to terminate a woman's employment because of her pregnancy, or

(b) to refuse to grant to the employee a reasonable leave of absence for such pregnancy, or

(c) to deny to the employee, who is disabled as a result of pregnancy, any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer.

(2) Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe

INTRODUCED BILL

LC 0005

benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

(3) The provisions of this section shall not apply to:

(a) termination of employment where the employee is thereupon entitled to benefits under the terms or conditions of any bona fide retirement or pension plan or collective bargaining agreement between the employer and a bona fide labor organization,

(b) operation of the terms or conditions of any bona fide retirement or pension plan,

(c) operation of the terms or conditions of any bona fide group or employee insurance plan, or

(d) operation of any bona fide apprenticeship system or plan.

Section 3. Complaint--how filed. A person claiming to be aggrieved by a violation of section 2 of this act may make, sign, and file a verified complaint with the commissioner of labor and industry which shall state the circumstances of the violation and the particulars thereof and shall contain such other information as may be required by the commissioner. In addition, the commissioner whenever he has reason to believe that section 2 of this act has been or is being violated, may issue a complaint.

If, upon all the evidence, the commissioner finds that

HB. 9

a respondent has engaged in a violation of section 2 of this act, he shall state his findings of fact and shall order the respondent to reinstate the complainant if she so desires and to pay to the complainant the damages resulting from the violation. If, upon all the evidence, the commissioner finds that the respondent has not engaged in a violation of section 2 of this act, he shall state his findings of fact and shall dismiss the complaint.

Section 4. Enforcement. The commissioner or his authorized representatives may enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they consider appropriate, to determine whether any person has violated any provision of this act or any regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

The commissioner or his authorized representatives may administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the commissioner.

Section 5. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this act. Rulemaking under this act shall comply with the provisions of the Montana Administrative

Procedure Act.

Section 1. Individual action. Nothing in this act shall preclude an individual from prosecuting a private action in the district court alleging violation of the provisions of this act or any other act.

-End-

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS
HOUSE OF REPRESENTATIVES
January 10, 1975

A meeting of the Labor & Employment Relations Committee was held on Friday, January 10, 1975, at 10:30 a.m., in Room 433 of the Capitol Building, with Chairman Gary Kimble presiding. All members were present.

The following bills were heard in this order: HB# 11
HB# 9
HB# 22

HB # 11--SPONSOR: Rep. J. D. Lynch, said that this silicosis treatment allowance is a dying fund, but because of its impact, he would like to increase payments from $175 to $225. He said about 278 people depended on this legislation. Ernie Post, MT. AFL-CIO Association--witness statement I--said that this bill would cater to those persons with limited incomes. No fiscal note was required on the bill, but it was estimated that it would total $166,800 for 1976, and $163,200 for 1977. Norm Grosfield, Acting Administrator, WCD, was available for questioning.

HB # 9--SPONSOR: Rep. Gail Stoltz, said that this bill would make it unlawful for any employer to terminate an employee because of pregnancy, and would also enable her to obtain court action. Proponent Ernie Post, Mt. AFL-CIO, suggested an amendment for page 2, Section 3, concerning the collective bargaining agreements. He thought that all laws should provide for maternity leave, including collective bargaining. He also suggested that Title VII be included in this bill. Lloyd A. Markell, Mt. Education Association,--witness statement II--said that under present conditions public school teachers are compelled to resign or to take leave without pay, and denied use of their legal sick leave during pregnancy. He suggested revision of Section 1, ss (2)(b), line 15, the word "reasonable". He questioned its validity, and also the exclusion clause in Section 3(a). Rosemary Zion, consultant for the bill, said that the language and provisions of the bill were adapted from Connecticut, and would like to see the language clarified more. Diane Rotering, U of M School of Law, Women's Caucus,--witness statement III--submitted four amendments to the bill, and also requested amendments on Title VII of the Civil Rights Act of 1964, the Code of Federal Regulations, Title 29, Chapter XIV, concerning EEo, and Title 64, Chapter 3, concerning discrimination. Tom Schneider, Mt. Public Employees Association asked for revision on Section 3, and that neutral language beused throughout the bill, changing "workment" to "workers". Charlotte Posey, Communications Workers of America, said that she would like to see all maternity disabilities be considered just as any other

temporary disability is considered. The following persons also spoke in favor of the bill: Lonney Meyer, Retail Clerks Union; Wallace Edland, Mt School Board Association; George Hammond, American Federation of State, County & Municipal Employees, AFL-CIO; Jan Gerke, Helena Women's Political Caucus; and Michael Pichette, Mt Democratic Party.

Wally Clardy, from the Gibbons Company, Unemployment Tax Control, did not support nor oppose the bill, but wanted to point out some problems the bill might impose on employers. He stated that the average leave taken by an employee is between 5 and 6 months, and the employer must then hire another person to fill the vacated position. He said this would cause the employers unemployment tax rate to increase considerably by terminating the temporary help. Chad Smith, representing Unemployment Compensation Advisors, said that this bill would be hurting one group of people to protect the rights of anthoter, and submitted an amendment which would add an additional section as follows: "Section 7. Any unemployment benefits paid to any person by application of this act shall not be charged against any employer under the unemployment compensation law."

Rep. Johnson asked approximately how much this bill would effect an employees tax rate. Mr. Clardy replied that he didn't know, but that the average tax rate of 1.5% would cost about $1,725. Chairman Kimble asked if Diane Rotering wanted to specify a time limit to file for administrative action. She said that she would favor a reasonable limit.

HB # 22--SPONSOR: William Baeth, introduced Norm Grosfield, Acting Administrator, WCD, who said that this bill was a housekeeping bill, mainly to change and simplify the language, and to change prior legislations now obselete. He said that none of the changes were substantial, and that eventually, it would all be recodified for clarity.

Ernie Post, MT AFL-CIO Association, said that he saw nothing wrong with the bill as is, but would like to offer an amendment that would change language to include both sexes. Mr. Grosfield said he would draft the amendments to include this. Chad Smith, representing the American Mutual Insurance Alliances, requested an amendment be made on p. 32, line 21, to include the number of members to act on an appeal.

No further testimonies, the committee went into executive discussion.

HB # 11--Rep. Baeth moved that HB # 11 DO PASS, seconded by Rep. Ellis. Motion carried with all in favor except Rep. Ellerd Opposed.

HB # 9--Chairman Kimble requested that all amendments on the bill be postponed for a latter date so that technical drafting could be done.

NAME Johnny Cleary BILL No. 9

ADDRESS ~~1007 E 6th~~ 1091 11th Ave DATE 1/16/75

Helena

WHOM DO YOU REPRESENT? The Gibbons Co, Inc.

CHADWICK SMITH - UNEMPLOYMENT COMP MONIES - Box 609 Helena

SUPPORT? _____ OPPOSE? _____ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Concern for the last employer of the interim employee hired as a result of a leave of absence given as a result of this act. If enacted this act would create a great liability on the last employer and ~~could~~ could tend to increase this employers unemployment compensation contributions ~~rate~~ rate to the highest rate allowed under statute.

We therefore suggest an amendment to the effect that the employer of an interim employee hired as a result of a leave of absence granted as a result of this act not be liable for any unemployment compensation benefits which may be paid to the ~~one~~ interim employee who become unemployed when the party on leave of absence returns to work under her job guarantee under this act.

April 1974

SUPREME COURT KILLS MANDATORY MATERNITY LEAVE

WASHINGTON, D.C.—The U.S. Supreme Court has struck down mandatory maternity leave provisions set by school boards. The High Court ruled seven to two that mandatory provisions for such leaves-of-absence, regardless of an individual's ability to continue work, violate the Fourteenth Amendment's guarantee of due process of law.

NEA President Helen Wise hailed the decision in favor of three NEA-backed teachers as "the greatest advance for female teachers since married teachers gained the right to teach."

NEA invested more than $25,000 in district, appellate, and Supreme Court legal battles in the cases that culminated in the January 21 decision. NEA initiated and fully financed the Susan Cohen case (Chesterfield County, Virginia) from its beginnings in 1971 and shared in cooperation with Women's Law Fund all legal expenses in the case of Ohioans Jo Carol La Fleur and Elizabeth Nelson.

"The ruling means," said NEA President Wise, "that pregnant teachers who can work and want to work will no longer be compelled to leave their jobs a specified number of months before the scheduled birth. The educational process will be enhanced by this ruling since teachers free from unreasonable restrictions are better able to provide the type of instruction that parents, teachers, and students want.

"NEA has pioneered the fight on the maternity leave and sex discrimination issues on many fronts," she added. "This ruling encourages NEA to continue its efforts to attack sex discrimination in other areas, such as sex role stereotyping in textbooks, failure to promote women teachers with qualifications equal to men, and anti-nepotism practices that cause the female spouse to lose her job." Wise said.

The Court found that the two arguments the school boards gave for mandatory leave policies in these cases did not justify the sweeping mandatory regulations that "employ irrebuttable presumptions that unduly penalize a female teacher for deciding to bear a child." The school boards had argued that firm cut-off dates are necessary to maintain continuity of classroom instruction, and that some teachers become physically incapable of adequately performing certain duties during the latter part of their pregnancy.

The Court noted that many pregnant teachers are capable of working, that administrative reasons alone are inadequate to deny a women her rights, and that arbitrary cut-off dates "have no rational relationship to the valid state interest of preserving continuity of instruction. As long as the teacher is required to give substantial advance notice of her condition," the Court continued, "the choice of firm dates later in pregnancy would serve the boards' objectives just as well, while imposing a far lesser burden on the women's exercise of constitutionally protected freedom."

ONE TEACHER'S FIGHT FOR ALL

La Fleur: "I'm Gutsy When I'm Angry Enough"

by Roxanne Weissman,
REPORTER *contributing editor*

CLEVELAND, OHIO—Michael La Fleur, age 2½, clutched his green quilted blanket and spotted stuffed dog as he left grandmother's house to rejoin his mother Jo Carol at the end of her teaching day. When asked what he did all day, rosy-cheeked Michael, who had

teaching past arbitrary, restrictive school board time limitations have extended the rights of female teachers across the country.

Jo Carol La Fleur is one of three teachers whose NEA-backed maternity leave cases went up to the U.S. Supreme

they ought to be," she says as she rises to her full height of 5 foot 2, adding, "I guess I'm gutsy when I'm angry enough."

Guts. That's what it takes to fight for a principle despite 3 a.m. phone calls, rape threats, and hate mail. The usual sick letters poured in following the *Cleveland Press* photo story on La Fleur

of his age and childless state. To me, the most disturbing mail was from parents who should know better. A woman with five children wrote that the idea of sharing pregnancy in public disgusts her, while others said that they did not want their child to be in a class with a pregnant teacher." Even some female teachers want to impose their

WITNESS STATEMENT II

MATERNITY CASE WINNERS GRANTED $30,000

WASHINGTON, D.C.—Two NEA-backed Cleveland teachers whose nationally publicized maternity leave case received a favorable judgment in the U.S. Supreme Court in January have been granted back pay and court expenses totaling more than $30,000.

The settlement to Jo Carol La Fleur and Ann Elizabeth Nelson was agreed to in the U.S. District Court, Cleveland, by the Cleveland Board of Education. The judgment was entered June 11 by District Court Judge Robert B. Krupansky on remand of the case from the Supreme Court.

La Fleur is to receive nearly $8,000 in lost wages, interest, and medical benefits for the period from March 1971 to January 1972 when she could have been teaching had it not been for the Cleveland district's mandatory leave policy.

Nelson will receive $2,650 for the period when she could have been employed prior to the birth of her child in August 1971. An attorney for the Women's Law Fund received $15,000 in fees plus more than $5,000 in court-costs.

8/74

STATEMENT II

44th LEGISLATIVE ASSEMBLY

TESTIMONY OF: Diane Botering

REPRESENTING: Women's Caucus, University of Montana, School of Law

TO: House Labor and Employment Relations Committee

REGARDING: HB 9, A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MATERNITY LEAVE TO PUBLIC AND PRIVATE EMPLOYEES."

COPY OF TESTIMONY

The Women's Caucus of the University of Montana Law School supports HB 9. In addition, the Women's Caucus proposes the following amendments:

1. On page 1, Section 2 - Denial of Maternity leave unlawful. That a provision be added under subsection (1) to prohibit an employer from taking retaliation upon an employee who files a complaint with the Commissioner.

Reasons: There needs to be protection against employer retaliation if an employee files a complaint, as there is for employees who file complaints with the National Labor Relations Board.

2. On page 1, Section 2 - Denial of Maternity leave unlawful. That a provision be added under subsection (1) to prohibit an employer from requiring an employee to take a mandatory maternity leave for an unreasonable length of time.

Reasons: Maternity leave should be requested by the employee for the time period desired by the employee. An employer should not be allowed to require an employee to take a mandatory leave for five or six months.

3. On page 2, lines 4-15: delete. Section 2(3) be removed in its entirety.

Reasons: The section should be removed or many of the supposed protections of the Act will be lost.

4. On page 3, Section 4 - Enforcement. That a provision be added to this Section specifying a time limit within which the Commissioner must act following receipt of a complaint.

Reasons: An employee who has been terminated should be entitled to immediate recourse.

The Women's Caucus predicates its support for HB 9 and the requested amendments on the following issues:

1. Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunities Act of 1972.

United States Code Annotated, Title 42 - The Public Health and Welfare, Subchapter VI - Equal Employment Opportunities, Section 2000e-2 - "Unlawful employment practices - Employer practices."

"(a) It shall be unlawful employment practice for an employer:
(1) to fail or to refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C.A. Section 2000e-2

2. Code of Federal Regulations, 1974, Title 29 - Labor, 500-1899, Chapter XIV - Equal Employment Opportunity Commission, Section 1604.10 - "Employment policies relating to pregnancy and childbirth."

" a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII. (supra)
b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms as they are applied to other temporary disabilities.
c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity." 29 C.F.R. section 1604.10(b) (1973)

3. Revised Codes of Montana, 1947, Title 64, Chapter 3 - Freedom from Discrimination.

"64-306: It is an unlawful discriminatory practice for:
(a) an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation

or in a term, condition, or privilege of employment because of his race, religion, color, or national origin or because of his age, physical or mental handicap or sex when the reasonable demands of the position do not require an age, physical or mental handicap or sex distinction.
(d) an employer, labor organization or employment agency to discharge, expel, or otherwise discriminate against a person because he has opposed any practices forbidden under this act or because he has filed a complaint, testified, or assisted in a proceeding under this act." 64 R.C.H. 306 (1947)

4. United States Supreme Court Decision, Cleveland Board of Education v. LaFleur (1974)

The Supreme Court held that mandatory school board rules requiring pregnant school teachers to take maternity leaves of 4 and 5 months prior to expected births of children denied due process since arbitrary cut-off dates had no valid relationship to state interest. That portion of the school board rules making teachers ineligible to return to work until after the children were at least 3 months old was also invalid.

44th LEGISLATIVE ASSEMBLY

TESTIMONY OF: Diane Hotering

REPRESENTING: Women's Caucus, University of Montana, School of Law

TO: House Labor and Employment Relations Committee

REGARDING: HB 9, A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MATERNITY LEAVE TO PUBLIC AND PRIVATE EMPLOYEES."

The Women's Caucus of the University of Montana Law School recommends the following amendments to HB 9 :

1. On page 1, Section 2 - Denial of Maternity leave unlawful. That a provision be added under subsection (1) to prohibit an employer from retaliation against an employee who files a complaint with the Commissioner under this act.

2. On page 1, Section 2 - Denial of Maternity leave unlawful. That a provision be added under subsection (1) to prohibit an employer from requiring an employee to take a mandatory maternity leave for an unreasonable length of time.

3. On page 2, lines 4-15: delete. Section 2(3) be removed in its entirety.

4. On page 3, Section 4 - Enforcement. That a provision be added to this Section specifying a time limit within which the Commissioner must act following receipt of a complaint.

1/10/75

RE: HOUSE BILL NO. 9

"AN ACT TO PROVIDE MATERNITY LEAVE TO PUBLIC AND PRIVATE EMPLOYEES."

COMMITTEE: LABOR AND INDUSTRY

BILL SPONSOR: STOLTZ, BRADLEY

WE WISH TO GO ON RECORD AS SUPPORTING THE PRINCIPLE OF HOUSE BILL NO. 9. WITH 39% OF THE WOMEN OF MONTANA WORKING, MANY FAMILIES DEPEND ON THE WOMAN'S INCOME. THIS PROTECTS A FAMILY FROM UNDUE HARDSHIP BY LOSING AN INCOME BY PROVIDING A REASONABLE law FOR MATERNITY REASONS.

THE FEDERAL LABOR LAW, TITLE 29, CHAPTER XIV, PART 1604.10(b) STATES:

> DISABILITIES CAUSED OR CONTRIBUTED TO BY PREGNANCY, MISCARRIAGE, ABORTION, CHILDBIRTH, AND RECOVERY THEREFROM ARE, FOR ALL JOB-RELATED PURPOSES, TEMPORARY DISABILITIES AND SHOULD BE TREATED AS SUCH UNDER ANY HEALTH OR TEMPORARY DISABILITY INSURANCE OR SICK LEAVE PLAN AVAILABLE IN CONNECTION WITH EMPLOYMENT. WRITTEN AND UNWRITTEN EMPLOYMENT POLICIES AND PRACTICES INVOLVING MATTERS SUCH AS THE COMMENCEMENT AND DURATION OF LEAVE, THE AVAILABILITY OF EXTENSIONS, THE ACCRUAL OF SENIORITY AND OTHER BENEFITS AND PRIVILEGES, REINSTATEMENT, AND PAYMENT UNDER ANY HEALTH OR TEMPORARY DISABILITY INSURANCE OR SICK LEAVE PLAN, FORMAL OR INFORMAL, SHALL BE APPLIED TO DISABILITY DUE TO PREGNANCY OR CHILDBIRTH ON THE SAME TERMS AND CONDITIONS AS THEY ARE APPLIED TO OTHER TEMPORARY DISABILITIES.

Jan Gerke

JAN GERKE
HELENA WOMEN'S POLITICAL CAUCUS

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS
HOUSE OF REPRESENTATIVES
January 17, 1975

A meeting of the Labor & Employment Relations Committee was held on on Friday, January 17, 1975 at 10:30 a.m. in Room 428 A of the Capitol Building, with Chairman Kimble presiding. All members were present.

The following bills were heard in this order: HB # 9
HB # 38
HB # 39

HB # 9--SPONSOR: Rep. Gail Stoltz gave her closing statement, and said that she supported all amendments made by the proponents, but not particularly with the ones made by the opponent.

HB #38--SPONSOR: Rep. Pat McKittrick, said this bill would allow public inspection of WCD records, and has two good aspects: 1) It is an extention of the right to know bill. This is the major premise of the bill, make the administration responsible in keeping them open. Section 3 allows that certified copies be made available to the public at a reasonable fee. 2) Provides the right of privacy. This allows for the exemption of those records which have nothing to do with the interests of the state. He said that a worker's whole medical history is file under one system, and only those pertaining to the public will be opened. Rep. McKittrick suggested an amendment on page 2, section 4, lines 11 through 13, by striking these in their entirety, and inserting: "In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:""

Sam Gilluly, MT Press Assn., supported the bill saying that it will help the press inform the people. Nor Grosfield, Acting Administrator, WCD, said that the division supported the bill. He said this confirms the present practice of the division, and gives them authority to exempt those medical evidences that may be incriminating to the claimant. He said that a claimant's psychological and medical records are filed together, of which most psychological records are not needed for public scrutiny. Dr. Strizich, medical consultant with WCD, said a considerable amount of information could be damaging to the claimant if opened to public scrutiny. He said that a doctor is obligated to keep these private. Jim Murry, AFL-CIO, said that he supported this bill over SB 50, which is also being introduced. SB 50 has a conflict concerning the rightto know clause. He said that claims with the attorney, and records where employer-employee are involved should always be opened. Dr. John McMahon, MT Medical Assn., also supported HB 39 over SB 50, because SB 50 would open all records of a claimant to the public.

There was no opposition to the bill.

HB #39--SPONSOR: Rep. Jim Mular, provided a witness statement saying that this bill would amend the 2% lump sum so that it does not tax the insured worker. The 2% lump sum is collected for the insurance fund. Mr. Jim Murry and Mr. Norm Grosfield both supported the bill.

There was no opposition to the bill.

No further witnesses the committee went into executive discussion.

HB # 9--Rep. Kimble pointed out that the last amendment on the attached sheet was offered by the opponent. Rep. Baeth asked how the amendment would effect the employer. Fred Barrett, administrator, Employment Security Division, who was available for questioning, replied that in any case, the employer would benefit, especially if he employs many women. He said this amendment would allow the employer to withdraw from the employer's fund, which is an over-all fund, instead of withdrawing from his own fund. Mr. Barrett said this would discriminate against male workers.

REP. FEDERICO MOVED TO AMEND PAGE 1, LINE 12 BY STRIKING ", BY HIMSELF", SECONDED BY REP. BAETH. MOTION CARRIED UNANI.

REP. FEDERICO MOVED TO AMEND PAGE 1, LINE 21 BY INSERTING: (D) TO RETALIATE AGAINST ANY EMPLOYEE WHO FILES A COMPLAINT WITH THE COMMISSIONER UNDER THE PROVISIONS OF THIS ACT, OR (E) TO REQUIRE THAT AN EMPLOYEE TAKE A MANDATORY MATERNITY LEAVE FOR AN UNREASONABLE LENGTH OF TIME.", SECONDED BY REP. MCFADDEN. MOTION CARRIED UNANIMOUSLY.

REP. FEDERICO MOVED TO AMEND PAGE 2, LINES 4 THROUGH 15 BY STRIKING THESE IN THEIR ENTIRETY. MOTION CARRIED UNANIMOUSLY.

REP. FEDERICO MOVED TO AMEND PAGE 2, LINE 24 BY INSERTING "WITHIN SIXTY (60) DAYS OF THE RECEIPT OF A COMPLAINT THE COMMISSIONER SHALL STATE HIS FINDINGS OF FACT AND DECISION. MOTION CARRIED UNANIMOUSLY.

REP. FEDERICO MOVED TO AMEND PAGE 4, LINE 2, BY CHANGING THE NUMBER "(1)" TO "(6)". MOTION CARRIED.

REP. ELLERD MOVED TO AMEND PAGE 4, AFTER LINE 5, BY INSERTING A NEW SECTION TO READ AS PER ATTACHED SHEET OF AMENDMENTS, SECONDED BY REP. BABCOCK. The floor was opened for questioning. Mr. Barrett said this amendment would exempt employers from having their unemployment tax raised, but places the burden on the over-all fund. Rep. Dassinger said this would treat women temporary help differently than the male help. Rep. Babcock asked if in the future, paternity leave would be granted. Mr. Barrett said that according to present trends, probably so. Mr. Ellerd said that the question at hand is, who should be charged for the unemp. compensation, and felt the whole burden should not be placed on the employer. Rep. Kimble pointed out that this would show favor to the employer

who hires more female workers. Question was called. MOTION FAILED WITH FEDERICO, BABCOCK, ELLERD, ELLIS, GUTHRIE, MCFADDEN AND SIVERSEN IN FAVOR AND BARTH, DASSINGER, GILLIGAN, JOHNSON, KELLY, MAGONE, AND TRAVIS OPPOSED.

REP. BARTH MOVED HB 9 DO PASS AS AMENDED, SECONDED BY REP. TRAVIS. Rep. Sivertsen said that you have to take into consideration the cost to the employer. He said that a pregnancy is not a sickness, and should not be termed as a disability. Rep- Ellerd said that any employer would tend to discriminate against a women, and hire a male employee. Rep. Travis in reply said that the Civil Rights Act of 1964 should take care of this type of act. MOTION CARRIED WITH REPS. FEDERICO, BARTH DASSINGER, [illegible], GILLIGAN, JOHSON, KELLY, MAGONE & TRAVIS IN FAVOR, AND REPS. BABCOCK, ELLERD, ELLIS, GUTHRIE, MCFADDEN & SIVERTSEN OPPOSED.

HB #38--REP. FEDERICO MOVED TO AMEND PAGE 2, SECTION 4, SS (1), LINES 11-13, BY STRIKING THIS, AND INSERTING "IN ASSURING THAT THE RIGHT OF INDIVIDUAL PRIVACY SO ESSENTIAL TO THE WELL-BEING OF A FREE SOCIETY SHALL NOT BE INFRINGED W/O THE SHOWING OF A COMPELLIN PELLING STATE INTEREST, THE FOLLOWING PUBLIC RECORDS OF THE DIVISION ARE EXEMPT FROM DISCLOSURE:" MCFADDEN SECONDED. MOTION CARRIED UNANIMOUSLY.

REP. TRAVIS MOVED HB 38 DO PASS AS AMENDED, SECONDED BY REP. FEDERICO. MOTION CARRIED UNAIMOUSLY.

HB #39--REP. BARTH MOVED AN AMEND TO MAKE THIS BILL EFFECTIVE UPON PASSAGE, SECONDED BY REP. FEDERICO. MOTION CARRIED UNANIMOUSLY.

REP. FEDERICO MOVED HB 39 AS AMENDED DO PASS, SECONDED BY REP. MAGONE. MOTION CARRIED UNANIMOUSLY.

Nofurther business, the meeting was adjourned to reconvene January 22, at 10:30 a.m. in the Governor's Reception Room.

GARY N. KIMBLE, Chairman

Gloria Wong

Gloria Wong, Secretary

AMENDMENTS SUGGESTED FOR HB 9

Page 1, line 12 - Delete the punctuation and words ", by himself".

Page 1, line 21 - Insert new subsections (d) and (e) to read as follows:

(d) to retaliate against any employee who files a complaint with the commissioner under the provisions of this act, or

(e) to required that an employee take a mandatory maternit/ leave for an unreasonable length of time.

Page 2, lines 4 through 15 - Delete them in their entirety.

Page 2, line 24 - Delete the punctuation mark ".", and insert "within sixty (60) days of the receipt of a complaint the commissioner shall state his findings of fact and decision.

Page 4, line 2 - Change the number"(1)" to "(6)".

Page 4, after line 5 - Add a new section to read as follows:

"Section 7. Exemption for unemployment tax pubposes. Any unemployment benefits paid to a persons as a result of application of this act may not be charged against an employer under the unemployment compensation law."

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 3, 1975

The seventh meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in room 402 of the State Capitol Building at 9:30 a.m.

ROLL CALL: All members were present with Senator Etchart excused.

CONSIDERATION OF HOUSE BILL 39: Representative Mular appeared before the committee to introduce this bill. This bill eliminates the present 2% worth adjustment on lump-sum settlements. This is like a sales tax on lump-sum payments. (See attached Memorandum.)

Norman Grosfield, of the Division of Workmen's Compensation, appeared in support of this bill. In the law, if someone applies for a lump-sum settlement, the law requires a 2% discount be taken. It is significant that an injured man, in this day and age, receive all the money he can. This 2% adjustment is very insignificant. Private insurers and Plan 1 insurers waive this fee.

Ernie Post, of the Montana AFL-CIO, appeared in support of HB 39. This 2% is deducted from the claimants award. He also stated that in these times it is important to an injured worker to be awarded his total claim. This is discriminatory against Plan 3 carriers because Plan 1 and Plan 2 carriers waive this charge.

CONSIDERATION OF HOUSE BILL 9: Representative Stoltz appeared before the committee to introduce this bill. HB 9 is a result of the Interim Committee on equal rights of the sexes. HB 9 deals with maternity leave, under the law it is unlawful to terminate a woman's employment because of her pregnancy. She must be reinstated with full pay and benefits. It is also unlawful to require an employee to take a mandatory maternity leave for a ridiculous length of time. If these rights are violated a person may file a complaint with the commissioner of labor.

Ernie Post, of the Montana AFL-CIO, appeared in support of HB 9. He began his testimony by quoting the Title VII of the 1964 Civil Rights Act "It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin;". Mr. Post then sited a few court cases that dealt with sex discrimination. (See attachments.) In many organizations, if a man is employed, his wife is covered in the case of pregnancy. It is only fair that if the woman is employed she should also be covered for herself. This coverage should work out of the trust fund which would take the burden off the group plans.

Don Judge, of the AFSCME AFL-CIO, appeared in support of HB 9. Mr. Judge supported HB 9 because of the public employees. Public employees are traditionally under paid, and for this reason it is almost necessary for both the man and the wife to work. This fact is a type of manditory birth control and every one should have the

right to a family. This bill would guarantee that right, because it would assure the wife of her job after pregnancy.

Lloyd A. Markell, Montana Education Association, appeared in support of HB 9. Mr. Markell was interested in the bill as it relates to the teachers. Teachers have been subjected to all the abuses. They have been compelled to take leave at a manditory time during pregnancy. They are denied the use of their regular accrued sick leave. This mandatory time of leave for pregnanacy is not necessary and should be adjusted. The association hopes for a reasonably solution to this problem.

Chad Smith, of the Unemployment Compensation Advisors, appeared in opposition to this bill. Mr. Smith was not opposed to the general philosophy of the bill but only to one aspect. That aspect being the tax that would be imposed on the small employer. During the time an employee is on pregnancy leave, an employer must hire another person to fill in. When it comes time to reinstate that employee, the employer is creating unemployment for the person who had filled in, because he is small enough that he could not afford to keep him on. In this situation, if the fill in employee had worked long enough to collect unemployment benfits, the employer would be charged for this. This is totally unfair to the small employer, therefore, the attached amendment has been proposed to prevent this unjustice. (See attached.)

Jack Buckley, of Mountain Bell, appeared in opposition to this bill. This is too complex a problem to be decided by this bill. (A copy of his testimony is attached.)

Robert N. Helding, of the Montana Taxpayers Association, appeared in opposition to this bill. Also concerned with the small employer. The affect this bill could have on the small employer is tremendous. It could cause him to lose his merit rating if unemployment were caused by this pregnancy leave. It seems like the employee who was let go should still get her benefits and should not go against the employer's account.

Richard W. Lang, representing only himself, appeared in opposition to this bill. As a Montana taxpayer, this bill is going to cost money. This will result in higher taxes or higher prices. During this time of inflation it would be hard to afford any higher amounts paid. Mr. Lang said he was in favor of equality of the sexes, but is worried about the effect this bill will have on the Montana consumer and Montana taxpayer.

Representative Stoltz, said in closing, that these benefits would not be granted unless the individual was qualified to receive them. The employee has to work forty (40) hours a week. The employee must also be a full time employee having worked 3/4 of the year. In reply to the situation mentioned about the small employer, Representative Stoltz stated that it was the large companies that employ most of the women and it is the large companies that would be affected by the rate change.

At this point Representative Stoltz asked Ernie Post to answer a few of the questions posed by the opponents. Ernie Post, of the AFL-CIO, stated that the important thing that should be done is to look at the Supreme Court decisions in 1974. (See attached.) It is surprising that small employers are putting in to not have to pay unemployment at all. All employers pay into this fund. At this point Mr. Post suggested that before any decision is made on this bill Mr. Fred Barrett, of the Employment and Security Council Division, be called in to answer some of the questions.

Discussion was then held by the committee. At this time Senator Norman asked if there would be any objection by Representative Stoltz if the bill were amended to include paternity leave. There is a time when the father has been through alot of mental strain and has to share in the responsibility of taking care of the new child. Representative Stoltz said she had no objection and that this point had been brought up before.

Senator Olson then questioned the wording of "unreasonable length of time". Representative Stoltz replied that this should be decided by the patient and doctor.

At this point Senator Blaylock stated his desire to have Fred Barrett appear at the next meeting before discussing this further.

DISPOSTION OF HOUSE BILL NO. 39: Senator Mehrens moved that House BILL 39 BE CONCURRED IN. Motion carried unanimously with Senator Etchart excused.

ADJOURN:

There being no further business, the meeting was adjourned at 10:45 a.m.

Robert E. Lee, Chairman

DATE 2-3-79

COMMITTEE ON Labor & Employment BILL NO. HOUSE 9 & 39

VISITOR'S REGISTER

NAME	REPRESENTING	BILL NO	Check One: Supports	Opposes
Tony Pancha	Self	HB9		
Richard W Lang	Myself	HB9		X
Tom Gundlach	AFSCME AFL-CIO	HB9 HB39	X	
Ernest Post	Mont State AFL-CIO	HB9 HB39	X	
Rep. Marian	Montana Ed Assn	HB9	X	
Rep. Gail M Stolz	Chief sponsor	HB9	X	
Bruce Nelson	Montana Student Lobby	HB9		
[illegible] McMahon	Montana Taxpayers Assn	HB9		X
Jack Buckley	Montana Bill	HB9		X
James McCarthy	Dir Montana Coop	HB39	X	
Norman Hagenfeld	" " "	HB39	X	
[illegible]	Local 915 Steamfitt	HB39	X	
Chet Smith	Montana Coop Ednl Assn.	HB9	cancel	
Bob Needham	Montana Taxpayers Assn	HB9		X
Tom Schneider	Mt Public Employees Assn	HB9	XX	

(Please leave prepared statement with Secretary)

TECHNICAL COMMENT #13

RECEIVED

NOV 25 1974

DEPT. OF LABOR & [illegible]

INTERNATIONAL ASSOCIATION OF OFFICIAL HUMAN RIGHTS AGENCIES

[illegible]
Washington, D.C. 20036
(202) 347-3834

Vivian L. Cover
President
Seattle, Washington

James W. Bristow
First Vice President
Washington, D.C.

George F. Garcia
2nd Vice President
Iowa City, Iowa

Allan J. Carroll
Secretary-Treasurer
Des Moines, Iowa

Arthur L. Green
Immediate Past Chairman
Hartford, Connecticut

Margaret McKenna
(Acting) Exec. Dir.

(11/13/74)

A District of Columbia Nonprofit Corporation

RECENT SUPREME COURT DECISIONS RELATING TO SEX DISCRIMINATION

Two cases decided by the United States Supreme Court during the first half of this year establish new guidelines regarding the constitutionality of classifications related to sex.

Disability Benefits for Pregnancy

In Geduldig v. Aiello, U.S. , 42 Law Week 4905, 7 EPD 9432 (June 17, 1974), the Supreme Court held (6-3) that California's system of disability insurance does not violate the Equal Protections Clause of the Fourteenth Amendment because it excludes pregnancy-related disability from the program's coverage. The Court's opinion addressed the issue of possible sex discrimination inherent in such an exclusion only in the following footnote:

> The California insurance program does not exclude anyone from benefit eligibility because of gender but merely removes one physical condition--pregnancy--from the list of compensable disabilities. While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification like those considered in [Reed v. Reed, 404 U.S. 71 (1971)] and [Frontiero v. Richardson, 411 U.S. 677 (1973)] . . . . Absent a showing that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination

> against the members of one sex or the other, lawmakers are constitutionally free to include or exclude pregnancy from the coverage of legislation such as this on any reasonable basis, just as with respect to any other physical condition.

The dissenting opinion of Justices Brennan, Douglas and Marshall sharply disagreed, arguing that dissimilar treatment on the basis of physical characteristics inextricably linked to one sex inevitably constitutes sex discrimination.

Significance of Geduldig v. Aiello

It is not clear how much importance should be given to the Aiello decision. Basically, it merely establishes that not all classifications or distinctions based on pregnancy are unconstitutional. It does not affect the Court's earlier decision in Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974), which held that regulations requiring a teacher to take maternity leave beginning in mid-pregnancy, and preventing her from returning to work until three months after giving birth, violate the Due Process Clause of the Fourteenth Amendment because they employ irrebuttable presumptions that unduly penalize a female teacher for deciding to bear a child and thereby seriously burden the exercise of the constitutionally-protected freedom of personal choice in matters of marriage and family life. Nor does it have much value as an indicator of whether different treatment of pregnant persons constitutes statutorily-prohibited sex discrimination.

The Supreme Court decision in Griggs v. Duke Power Co., 404 U.S. 424 (1971), clearly established that statutes prohibiting racial discrimination in employment are violated not only by overt racial classifications (which would trigger the courts' strict

scrutiny in a constitutional challenge), but also by any classification not shown to be job-related which disproportionately excludes members of one race. There is no apparent reason why the same test should not be equally appropriate for sex discrimination under statutes which forbid it in employment. Under that test, any disadvantage in the terms and conditions of employment because of pregnancy would automatically disadvantage more women than men, and would therefore be presumed discriminatory unless shown to be job-related and required by business necessity.*/

Not only was the legal posture of Aiello different from that of a case brought under state or federal anti-discrimination statutes, but the factual situation was significantly different also. In Aiello the defendant was not an employer, but a state agency which had determined that its benevolent and successful disability insurance program could not be maintained if claims for pregnancy were permitted. To require the payment of benefits to pregnant women would necessitate higher premium charges or lower benefit payments, in either case working to the direct detriment of needy persons enrolled in the program. The Court's opinion highlights these factual considerations. For this reason

---

*/ One of the best ways of justifying the practice, of course, would be to show that it is identical to the way men are treated when they have a comparable temporary disability. Some decisions under state FEP laws have held that pregnancy must be treated like any other temporary disability (see, e.g., Bakken v. Board of Education, Waterloo Community Schools, 2 Empl. Prac. Guide ¶5112 (Wisc. Dept. of Industry, Labor and Human Relations 1972), and the U.S. Civil Service Commission has recently issued guidelines designed to insure that federal leave policies are applied to pregnant employees in the same manner in which they are applied generally.

also it is probable that the Court would adopt a different standard of analysis when presented with a challenge to employer-imposed distinctions in employment (or the terms and conditions thereof) based on pregnancy, under a statute prohibiting sex discrimination in employment. With unlawful sex discrimination as the main focus of the case rather than a peripheral one, and countervailing considerations of social benefit subordinate or absent, the Court would probably utilize a Griggs-oriented analysis which would hold pregnancy-related standards to be prima facie (though not conclusive) evidence of sex discrimination.

Statutory Tax Benefits for Widows

The decisive importance which the Court gives to the social purpose and effect of the challenged practice can be seen in another case decided earlier this year. In Kahn v. Shevin, U.S. , 42 Law Week 4591 (April 24, 1974), the Court upheld a Florida statute providing for a property tax exemption for widows, rejecting the arguments of petitioner, a widower, that such a gender-based classification violated the Equal Protections Clause of the Fourteenth Amendment. Holding that the law was "reasonably designed to further the state policy of cushioning the financial impact of spousal loss upon the sex for whom that loss imposes a disproportionately heavy burden," the Court attempted to distinguish the case from Frontiero v. Richardson, 411 U.S. 677 (1973), by describing Frontiero as a case "where the Government denied its female employees both substantive and procedural benefits granted males 'solely for administrative convenience'."

In fact, however, there is no logical difference between

Kahn and Frontiero (or Reed v. Reed, 404 U.S. 71 (1971)) in this regard. Reed dealt with a statute mandating a preference for males over females as administrators of estates because males generally have more financial experience than females and such a presumption was more administratively convenient than holding a hearing to determine which individual was actually better qualified. The statutes in Frontiero called for the payment of a dependent's allowance to married men in the armed forces automatically but to married women only on a showing that their husbands were actually dependent on them, because wives are generally dependent on their husbands and not vice versa, and it would have been administratively inconvenient and more expensive to make individual determinations as to which wives were actually dependent on their husbands. Likewise, the Florida statute in Kahn was designed to assist those for whom loss of a spouse had caused financial hardship, and it employed a classification based on sex, rather than more precise but harder to administer standards or individual determinations, because women generally have lower paying jobs, and "while the widower can usually continue in the occupation which preceded his spouse's death, in many cases the widow will find herself suddenly forced into a job market with which she is unfamiliar, and in which, because of her former economic dependency, she will have fewer skills to offer." 42 Law Week at 4592 (emphasis added).

Thus, the statute in all three cases mandates different treatment for men and women because of generalized assumptions about the social and economic position of women in our society, and the administrative convenience of relying on those generali-

zations rather than making more precise determinations based on individual circumstances.

A footnote in the Kahn decision, however, notes that the statutes in Frontiero were "not in any sense designed to rectify the effects of past discrimination against women." This points out the only real difference between Frontiero and Reed on the one hand and Kahn on the other. It is only if the Kahn statute is viewed as remedial in nature, designed to alleviate the economic effects of past sex discrimination, that a logical basis emerges for upholding it while striking down the legislation in Reed and Frontiero. Viewed in this way, the Kahn decision is not so much a retreat from the recent trend toward viewing sex-based classifications as inherently suspect, as it is an indication that the Court may accept with tolerance classifications based on race, sex and the like where they are designed to remedy past discrimination, when such issues as the constitutionality of goals and quotas are inescapably presented to it for decision.

DEPARTMENT OF ATTORNEY GENERAL

Attachment to UIPL 1186

Leon S. Cross
Deputy Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL
LANSING
48913

Honorable Alma G. Stallworth
State Representative
Capitol Building
Lansing, Michigan 48902

FEB 18 1972

Dear Representative Stallworth:

You have requested my opinion as to the validity of Section 28(1)(c) of the Michigan Employment Security Act [MCLA 421.28(1)(c); MSA 17.530(1)(c)]. Your question is in specific regard to the last clause of said section which reads in relevant part:

> "* * * However, a pregnant woman shall be ineligible to receive benefits for any week within the period beginning with the 10th calendar week before expected confinement, as determined by a physician, and extending through the sixth calendar week following the termination of pregnancy."

The Preamble, as well as Sections 12 and 53, point out that the Michigan Employment Security Act was enacted pursuant to the federal unemployment insurance program and that the Michigan act must be construed and administered in accordance with the policy and purposes of the federal program and federal regulations under the Social Security Act (42 USCA 501, et seq). See also Roxborough v MUCC, 309 Mich 505, 511 (1944). In Crow, et al v California Department of Human Resources, et al, ___ F Supp ___ (ND Calif No. C-70 1126 ACW, October 12, 1970), the court said in part:

> "Unemployment insurance, like public assistance, is administered by the individual States within a federal statutory framework. Both programs involve grants made to the States which have established programs of aid to unemployed and/or needy persons, which programs have been certified by relevant officials as meeting the standards set by federal statutes and regulations."

See also Smith v District Unemployment Compensation Board, 435 F 2d 433 (DC Cir 1970).

must be made clear, therefore, that the Michigan legislature is unrestrained in the regulations that it can impose upon the program, since the program must ultimately conform to federal standards.

In Nash v Florida Industrial Commission, 389 US 235, 88 S Ct 362, 19 L ed 2d 430 (1967), Mr. Justice Black, speaking for a unanimous Supreme Court, said in part:

> "It appears obvious to us that this financial burden which Florida imposes will impede resort to the Act and thwart congressional reliance on individual action. A national system for the implementation of this country's labor policies is not so dependent on state law. Florida should not be permitted to defeat or handicap a valid national objective by threatening to withdraw state benefits from persons simply because they cooperate with the government's constitutional plan....
>
> "In M'Culloch v Maryland, 4 Wheat 316, 436, 4 L Ed 579, 609, decided in 1819, this Court declared the States devoid of power 'to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government...." (at 239 and 240; emphasis added)

The section involved denies benefits to a pregnant female for a 16-week period. Such exceptions to eligibility would generally be valid, provided they did not conflict with the congressional purpose in enacting the program, other federal law, or the Constitution.

Title VII of the 1964 Civil Rights Act [42 USC 2000e-2(a)] provides in part:

> "It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or

> "(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his station as an employee, because of such individual's race, color, religion, sex, or national origin." (emphasis ours)

In addition, it is well to note that the United States House of Representatives last year passed H.J. Res. 264, a proposed constitutional amendment which would prohibit any and all discrimination on the basis of sex.

It thus becomes clear that the legislative branch of the Federal Government has expressed strenuous objection to laws which discriminate against women solely on the basis of sex.

The Executive Branch of the Federal Government has also acted. On December 31, 1970, the United States Department of Labor, Manpower Administration sent to all state employment security agencies a letter outlining pending federal legislation which would expressly prevent denial of benefits from federal assistance programs because of a person's sex. Mr. Harold Rosemont, Director of the Bureau of Unemployment Insurance, sent this material and a letter to the Michigan Employment Securities Commission Advisory Council and in that letter he noted:

> "As you know, the Michigan Employment Security Act provides in Section 28(1)(c) that a pregnant woman is deemed ineligible for employment benefits for any week within the period beginning with the tenth calendar week before expected confinement and extending through the sixth calendar week following the termination of pregnancy.
>
> "The manpower administration considers such a provision to be discriminatory but has not gone so far at this time as to deem a legislative change mandatorially required."

The federal courts have also found that discriminatory employment practices based on sex are invalid. Schattman v Texas Employment Commission, ___ F Supp ___ 3CCH Employment Practices Decisions, Paragraph 8146 (WD Texas, March 4, 1971) is in point.

Plaintiff was employed by defendant commission until she was involuntarily terminated pursuant to defendant's policy requiring pregnant employees to terminate their employment no later than two months before the expected delivery date. [1] The court held that such an employment policy violated Title VII of the Civil Rights Act of 1964 and said in part:

> "By virtue of female physiology, the Defendants' policy applies solely to women. Women are terminated not because of their unwillingness to continue work, their poor performance, or their need for personal medical safety, but because of a condition attendant to their sex. This is the very type of discriminatory regulation condemned by the interpretive regulations of the Equal Employment Opportunity Commission. 29 C.F.R. § 1604.1(a) provides in part that
>
> "'The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.'
>
> "In view of this provision, Richards v. Griffith Rubber Mills, 300 F. Supp. 338, 340 (D. Ore. 1969), concluded that 'the law no longer permits either employers or the states to deal with women as a class in relation to employment to their disadvantage.'"
> (emphasis added)

The court further noted that employers might have such a policy based upon a particular individual's medical problems, inability to work or upon the safety hazards in a particular job, but "that broad policies not so justified are contrary to law."

In regard to the interpretive regulations of the Equal Employment Opportunity Commission, such as 29 CFR 1604.1(a) quoted above, in Griggs v Duke Power Company, 401 US 424, 434-435, 91 S Ct 849, 28 L Ed 2d 158 (1971), the Supreme Court said:

> "The administrative interpretation of the act by the enforcing agency [the E.E.O.C.] is entitled to great deference. See, e.g., US v City of Chicago, 400 US 8, 27 L Ed 2d 9, 91 S Ct 18 (1970); Udall v Tall Man, 380 US 1, 13 L Ed 2d 616, 85 S Ct 792 (1965); Power Reactor Company v Electricians, 367 US 396, 6 L Ed 2d 924, 81 S Ct 1529 (1961)." (p. 165)

[1] This policy was less harsh than the ten week "pregnancy proviso" in Section 28(1)(a), the statute presently in question.

For another very recent case supporting this proposition, see Phillips v Martetta Corporation, 400 US 542, 91 S Ct 496, 27 L Ed 2d 613 (1971).

Even more recently the 7th Circuit Court of Appeals held that a retirement plan which differentiated between men and women violated the Civil Rights Act of 1964. Bartmess v Drewrys USA, Inc., et al, 444 F 2d 1186 (1971) Cert Den, ___ US ___, 30 L Ed 2d 252. There the court said:

> "A plain reading of the statute indicates that retirement plans which treat men and women differently with respect to their ages of retirement are prohibited. The plaintiff here, by virtue of the plan, is forced to give up three years of work together with the money she would have earned during that period. Such a forced retirement is tantamount to a discharge. Moreover, the classification of employees on the basis of sex is, of itself, contrary to the intent of Title VII. Rosen, supra; Sprogis v. United Air Lines, 444 F.2d 1194 (7 Cir., 1971)."

In another very recent case, Doe v Osteopathic Hospital of Wichita, Inc., ___ F Supp ___ (DC-Kansas), 40 LW 2262 (10/19/71), a federal district court held that a hospital is barred from discharging a female business office employee due to her pregnant, unwed condition because of the 1964 Civil Rights Act's ban on sex discrimination in employment.

In still another case, Sprogis v United Airlines, Inc., 444 F 2d 1194, (1971), the court said:

> "The scope of Section 703(a)(1) is not confined to explicit discriminations based 'solely' on sex. In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes. Section 703(a)(1) subjects to scrutiny and eliminates such irrational impediments to job opportunities and enjoyment which have plagued women in the past. The effect of the statute is not to be diluted because discrimination adversely affects only a portion of the protected class. Discrimination is not to be tolerated under the guise of physical properties possessed by one sex (cf. Cheatwood v. S. Central Bell Telephone and Telegraph Co., 303 F.Supp. 754, 759-760

(M.D.Ala.1969)) or through the unequal application of a seemingly neutral company policy. Cf. Phillips v. Martin Marietta Corp., 400 U.S. 542, 91 S.Ct. 496, 27 L.Ed.2d 613.

"Viewing the class of United's married employees, it is clear that United has contravened Section 703(a)(1) by applying one standard for men and one for women. Cf. Phillips v. Martin Marietta Corp., supra." (emphasis added)

Other recent cases make it increasingly apparent that the national public policy will not countenance invidious discrimination on grounds of sex. See, for example, Phillips v Martin Marietta Corp., 400 US 542, 27 L Ed 2d 613 (1971), no discrimination against female employees with pre-school children; Lansdale v Air Line Pilots Association International, 430 F2d 1341 (5th Cir., 1970), no discrimination on grounds of sex in the selection of air line flight attendants; Rosen v Public Service Electric and Gas Company, 409 F2d 775, 781 (3rd Cir., 1969), sex discrimination in retirement age invalid; Bowe v Colgate-Palmolive Company, 416 F2d 711 (7th Cir., 1969), weight restrictions on female employees invalid; Local 246, Utility Workers Union v Southern California Edison Co., ___ F Supp ___, CC par. 9369, 2 FEP Cases 349, 329 (C.D. Calif., 1969), males less than females may be victims of prohibited sex discrimination; Potlatch Forests, Inc. v Hays, ___ F Supp ___, 2 FEP Cases 1034 (E.D. Ark., 1970), where defendants imposed a non-compensatory leave upon plaintiff solely on the basis of a condition attendant to her sex, thus clearly discriminating against plaintiff on the basis of sex.

Numerous other courts have declared that "sex-based discrimination (will be) nullified when no persuasive difference between women and men could be offered to justify the difference in treatment." See Seidenberg v McSorleys' Old Ale House, Inc., 317 F Supp 593, 605 (1970), bars and pubs with state-issued liquor licenses are public places and must serve women; Abbott v Mines, 411 F2d 353 (6th Cir., 1969), women's right to jury service; United States ex rel. Robinson v York, 281 F Supp 8 (D. Conn., 1968), discriminatory penal terms for women invalid; Owen v Illinois Baking Corp., 260 F Supp 820 (W.D.Mich 1966), wife must be granted same right to sue for loss of consortium as husband; Kirstein v Rector and Visitors of University of Virginia, 309 F Supp 184 (E.D.Va., 1970), University's exclusion of female students invalid; In re Estate of Zeman, 1 Cal App 3d 657, 81 Cal Rptr. 910 (1969), equal protection prescribes arbitrary tax classification; McGrimm v Walsh, 438 F2d 365, 369 (7th Cir., 1969), women may act as executrix; Peterson Tavern & G. O. A. v Borough of Athorne, 57 NJ 180, 270 A2d 628 (1970), women may act as bartenders;

Commonwealth v Daniel, 430 Pa 642, 243 A2d 400 (1968), sex based discriminatory sentencing practices unconstitutional; Matter of Shipritzer v Lang, 17 App Div 2d 285, 289, 234 NYS 2d 285, 289 (1st Dept., 1962), aff'd, 13 NY 2d 744, 241 NYS 2d 869 (1963), eligible policewomen may compete for promotion to sergeant. The plain effect of the Equal Protection Clause, the court noted in White v Crook, 251 F Supp 401, 408 (M.D. Ala., 1966) "is to prohibit prejudicial disparities before the law," invalidating a statute excluding women from jury service.

It can therefore be seen that employment practices which discriminate against women on the basis of characteristics common to their whole group, such as the capacity to bear children, have been condemned by the courts as violating the 1964 Civil Rights Act's prohibition against sex discrimination in employment practices. All three branches of the federal government have expressed the national policy against employment practices which treat women differently than similarly situated men. For employment purposes at least, pregnancy is similar to any other temporary medical disability.

It is a well settled principle of constitutional law that where a state's statute stands as an obstacle to the realization of the objects of a federal statute, federal law prevails. Florida Lime and Avocado Growers, Inc. v Paul, 373 US 132, 141, 10 L ed 2d 248, 83 S Ct 1210 (1963); Cloverleaf Butter Co. v Patterson, 315 US 148, 155, 86 L ed 754, 62 S Ct 491 (1942); Jerome v United States, 318 US 101, 104, 87 L ed 640, 63 S Ct 483 (1943); and Kelly v Hearst Publications, Inc., 322 US 111, 123, 88 L ed 1170, 64 S Ct 851 (1944).

The Federal Civil Rights Act of 1964 has already been used in Michigan to invalidate Michigan law which discriminated against employees on the basis of sex. On December 30, 1969 the Michigan Attorney General held, in Opinion No. 4687, that a Michigan statute [2] limiting the working hours of women was in violation of the Federal Civil Rights Act of 1964 and would be superceded by that act.

[2] Section 9 of 1909 PA 285, MCLA 408.59; MSA 17.29

:ter recognizing this federal policy, it is well to know that employment practices which discriminate on the basis of sex are also contrary to the law and public policy of this state. The Michigan Fair Employment Practices Act, 1955 PA 251, MCLA 423.301 et seq; MSA 17.458(6) et seq, prohibits discriminatory employment practices on the basis of sex.

The section in question, therefore, is of dubious validity for the reasons set out above and in light of the 1964 Civil Rights Act. The final blow to the validity of this statute, however, most certainly comes from a fundamental principle of our laws as old as the Constitution itself - the equal protection of the laws.

The Fourteenth Amendment to the United States Constitution provides in Section 1:

> "No State shall make or enforce any law which shall... deny to any person within its jurisdiction the equal protection of the laws."
> (emphasis added)

And, the Michigan Constitution provides in Article 1, Section 2:

> "No person shall be denied the equal protection of the laws...."

The United States Supreme Court, in Reed v Reed, ___ US ___, 30 L ed 2d 225, 92 S Ct ___ (Nov. 22, 1971), recently spoke to the issue of sex discrimination and the equal protection clause. A provision of the Idaho Probate Code gave a mandatory preference for appointment as administrator of a decedent's estate to a male applicant over a female applicant, otherwise equally qualified. If both a male and female sought appointment, though both were equally entitled and qualified, the appointment had to be decided on the basis of sex. In applying the equal protection clause, the Supreme Court said:

> * * * this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. [citations omitted] The Equal Protection Clause of that Amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that

statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

* * * *

* * * * By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause. Royster Guano Co. v. Virginia, supra."
(30 L ed 229-230)

In Cohen v Chesterfield County School Board, BNA 3FEP Cases 526, 326 F Supp 1159 (1971), a federal district court in Virginia held that the school board had violated the Civil Rights Act of 1871 [3] by enforcing a regulation requiring a pregnant teacher to take maternity leave of absence at the end of the fifth month of pregnancy, since the regulation deprived the pregnant teacher of equal protection in that it treats pregnancy differently from other medical disabilities. The court held that there was no medical or psychological reason for such regulation and no tenable administrative reason for such regulation had been advanced. The court said:

"The unrefuted medical evidence is that there is no medical reason for the [maternity] regulation. As a matter of fact, pregnant women are more likely to be incapacitated in the early stages of pregnancy than the last four months. Further, there is no psychological reason for a pregnant teacher to be forced to take a mandatory leave of absence. In short, since no two pregnancies are alike, decisions of when a pregnant teacher should discontinue working are matters best left up to the woman and her doctor.

" In addition, no tenable administrative reason has been advanced by the defendants in defense of the provision. * * * Basically, the four month requirement set forth in the provision was arbitrarily selected.

" * * *

"In 1948 an equal protection argument was first put forth to the Supreme Court. Goesaert v Cleary, 335 US 464 (1948).

[3] 42 USC 1983

The plaintiffs contended that a Michigan statute prohibiting women from being licensed as bartenders, except wives and daughters of male owners, violated the equal protection clause of the Fourteenth Amendment. The Court upheld the statute stating that under the facts presented it was reasonable. Id. at 466. However, Mr. Justice Frankfurther, speaking for the Court noted that '[t]he Constitution in enjoining equal protection of the laws upon States precludes irrational discrimination as between persons or groups of persons in the incidence of a law.' Id. Thus, though absolute equality is not required, Douglas v California, 372 U.S. 353, 357 (1963), distinctions which are 'irrational,' 'irrelevant,' 'unreasonable,' 'arbitrary,' or 'invidious' violate even the broad standard. Harper v Virginia Bd. of Elections, 383 U.S. 663, 673-74 (1963) (Black, J., dissenting)."
(emphasis added)

The federal judge concluded:

"The maternity policy of the School Board denies pregnant women such as Mrs. Cohen equal protection of the laws because it treats pregnancy disability less favorably than other medical disabilities. Because pregnancy, which is unique to women, is like other medical conditions, the failure to treat it as such amounts to discrimination which is without rational basis, and therefore is violative of the equal protection clause of the Fourteenth Amendment. [citations omitted]."
(emphasis added)

In a recent Michigan arbitration decision, Southgate Education Association and Board of Education of the Southgate Community School District, A.A.A. No. 38 39 0525 71 (David G. Heilbrun, August 3, 1971) the arbitrator held that while the collective bargaining agreement covering teachers in the district imposed compulsory maternity leave, it also provided that nothing was intended to restrict the constitutional rights of teachers. Relying upon Schattman v Texas Employment Commission, supra, and Cohen v Chesterfield County School Board, supra, arbitrator Heilbrun observed:

"These cases invoke the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, the Civil Rights Act of 1871, and Title 7 of the Civil Rights Act of 1964. Both decisions reflect current enlightenment on the point."

Arbitrator Heilbrun, noting that the teacher appeared to be in good physical condition at the hearing, found the board's action to be inconsistent with her constitutional rights, ordered her reinstatement to her former position with full compensation for time lost, including payment of medical expenses incurred for which she had lost insurance protection which was a normal incident to her employment.

Unless there is good reason to treat pregnancy differently than other temporary disabilities common to both men and women, then different treatment is arbitrary discrimination prohibited by the equal protection clause.

The Citizens' Advisory Council on the Status of Women, which was established by the President of the United States, said in the following statement concerning pregnancy, childbirth and employment:

> "Childbirth and complications of pregnancy are, for all job-related purposes, temporary disabilities and should be treated as such under any health insurance, temporary disability insurance, or sick leave plan of an employer, union, or fraternal society. Any policies or practices of an employer or union, written or unwritten, applied to instances of temporary disability other than pregnancy should be applied to incapacity due to pregnancy or childbirth, including policies or practices relating to leave of absence, restoration or recall to duty, and seniority.
>
> "No additional or different benefits or restrictions should be applied to disability because of pregnancy or childbirth, and no pregnant woman employee should be in a better position in relation to job-related practices or benefits than an employee similarly situated suffering from other disability." Advisory Council on the Status of Women, Job-Related Maternity Benefits (October 29, 1970).

A provision in a state's unemployment compensation law subjecting pregnant and post-pregnant women to more stringent eligibility requirements than are applied to similarly temporarily disabled men seems patently discriminatory.

A statute which discriminates between otherwise similarly situated classes on the basis of a physical condition unique to one sex, is discriminating on the basis of sex. If that discrimination cannot be reasonably justified, then it is contrary to the law and public policy of the land. If the statute in question had made disadvantageous exceptions for persons suffering from Sicle Cell disease, it is unlikely that anyone would fail to recognize racial discrimination. It is equally clear that a statute which discriminates on the basis of pregnancy is discriminating on the basis of sex. This principle was recognized by the court in Sprogis v United Airlines, Inc., supra, when it said:

> "Discrimination is not to be tolerated under the guise of physical properties possessed by one sex."

Perhaps most compelling, however, is the simple fact that such a discriminatory provision, based exclusively on a physical condition unique to one sex, has no place in a social insurance program. The criteria normally applied (availability for work) is clearly more than adequate for the termination of benefits for all persons under the program about to undergo a temporary disability.

At some point near the end of a pregnancy a woman claiming benefits would become "unavailable for work," thus ineligible for benefits just like anyone else under the program. A provision which arbitrarily establishes her unique female temporary disability as different from other temporary disabilities denies to her the equal protection of the laws. Such a law fails to consider her willingness to work, her ability to perform, or her personal medical safety. In addition, the application of such a law results in arbitrary and unreasonable discrimination denying a pregnant female claimant equal protection of the laws.

Therefore, in specific response to your question, Section 28(1)(c) of the Michigan Employment Securities Act is in violation of the equal protection clause of the 14th Amendment to the United States Constitution and therefore invalid.

Very truly yours,

Frank J. Kelley

Attorney General

GPO 838-197

1. Amend page 4
Following: Line 13.
Insert: "Section 7. Any unemployment benefits paid to any person discharged from employment by reason of the reinstatement of another person by application of this act shall not be charged against the reinstating employer under the unemployment compensation law."

add a new Section 7 as follows:

"Section 7. any unemployment benefits paid to any person discharged from employment by reason of the reinstatement of another person by application of this act shall not be charged against the reinstating employer under the unemployment compensation law."

RATIONALE FOR MOUNTAIN BELL OPPOSITION TO HOUSE BILL NO. 9

Following considerable discussion and debate on H.B. 9 and as an industry deeply involved in this issue, in representing Mountain Bell I would like to address an interpretation of one area of this bill that appears totally unreasonable from the standpoint of a benefit program and the purpose a benefit program is intended to serve. I refer to Section 2C which is asking that a female employee who is disabled as a result of a normal pregnancy be entitled to disability benefits. In representing our business we oppose this because our benefit program is intended to offer relief to men and women on an equal basis because they are disabled due to an illness or accident which prevents them from working. In fact, as an industry we spend time and money on health and safety programs to help employees keep losses from disability to a minimum. Obviously, such a program on pregnancy is beyond the prerogative of any employer and certainly illustrates why normal pregnancy should not be considered a sickness disability under the benefit plant. Keep in mind we raise no question about abnormalities in connection with pregnancy or recovery therefrom as being compensable.

As recently as 1974 the United States Supreme Court ruled on this issue in a California case. The court held that it was not a violation of the equal protection clause of the constitution to exempt pregnancy from benefit insurance program coverage because if such coverage were required it would become so expensive that it could not be maintained without unduly burdening employees who contributed to its cost. Because of its relevance to this case A. T. & T. as amicus curiae submitted evidence showing that while women constituted 48% of the Bell System work force in 1971 and 1972, women received benefits for 65% of the days for

which disability payments were made. However, if normal pregnancy had to be included as sickness disability this figure would increase to 72% of the days for which payments were made. This introduces a different sex discrimination case involving men. In Montana, for example, for the year 1974 this change would cost the Telephone Company approximately $200,000 annually.

Our plea to this committee because of the complex nature of this issue is to let this be resolved in the courts where the application of the constitution, civil rights act, consent decree can be decided.

DISPOSTION OF HOUSE BILL NO. 109: Senator Mehrens moved that HB 109 BE CONCURRED IN. Motion carried unanimously.

DISPOSTION OF HOUSE BILL NO. 147: Senator Blaylock moved that HB 147 BE CONCURRED IN. Motion carried unanimously.

DISPOSTION OF HOUSE BILL NO. 32: Senator Smith moved that HB 32 AND AS SO AMENDED, BE CONCURRED IN. Motion carried with Senator Etchart voting no.

FURTHER CONSIDERATION OF HOUSE BILL 9: Fred Barrett of the Employment Security Division, appeared at the request of the committee to answer questions on this bill. Senator Lee explained the opposition to HB 9 that was brought out in the previous meeting. In short, the small company feels it would be unfair if they had to pay the unemployment charge for any employee that was laid off when they were required to reinstate the employee who was on maternity leave.

Mr. Barrett stated that the bill as it is makes no change on paying any benefits and that the small employer would probably not have to pay anything different than he is paying now. What the small employer is doing is taking a simple bill and trying to attach an amendment on to it that really has nothing to do with the actual bill. They are using it as a vehicle to get the small employer exempt from any charge back from the unemployment system. There probably would not be any charge back to begin with because an employee has to work at least six weeks in order to qualify for any benefits. It seems that there would be no need, in a normal maternity, for an employee to be off more than six weeks. Maternity should be treated like any other disability leave.

At this point Senator Blaylock moved that HB 9 BE CONCURRED IN. Senator Blaylock then asked it it would be a good idea to put the suggested amendment for limiting maternity leave to six weeks in the bill. Mr. Barrett did not feel it would be necessary because pregnancy should be treated like any other case of disability or illness.

Senator Hazelbaker then asked if there was really a need for the bill at all. Mr. Barrett said that the bill was drawn up in order to assure maternity leave. At this point Mr. Tom Keegan, of the Legislative Council, stated that there were four reasons this bill was drawn up: (1) you can't fire a woman because of her pregnancy, (2)can't refuse reasonable leave of absence, (3)you can't deny an employee any compensation, and (4)sets up a means to be used in retaliation if any of these benefits are denied.

At this point Senator Olson moved that an amendment be made to page 1, section 2, line 22, striking the period, insert a comma and the words "provided that an employee whose pregnancy is normal is not disabled within the meaning of this act." Motion lost with Senators Lee, Smith, Blaylock, Mehrens, and Norman voting no, and Senator Etchart excused.

At this point Senator Hazelbaker asked if it would be difficult to determine what is a normal pregnancy and what is not. Mr. Barrett then read the Unemployment Compensation Law that governs pregnancy leave. (See attached copy.)

Senator Blaylock's motion that HB 9 BE CONCURRED IN was carried with Senator Olson opposed and Senator Etchart excused.

ADJOURN:

There being no further business, the meeting was adjourned at 10:50 a.m.

Robert E. Lee, Chairman

STANDING COMMITTEE REPORT

February 6, 19 25

Mr. PRESIDENT

We, your committee on Labor and Employment Relations

having had under consideration House Bill No. 9

Respectfully report as follows: That House Bill No. 9

Recommend that Bill do pass

Passed

(Include statement of action—put with yellow copy)

Robert E. Lee
Chairman.

Robert E. Lee.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 9

INTRODUCED BY STOLTZ, BRADLEY, KIMBLE, HUENNEKENS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MATERNITY LEAVE TO PUBLIC AND PRIVATE EMPLOYEES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. (1) "Commissioner" means the commissioner of labor and industry.

(2) "Employer" means any public or private employer.

Section 2. Denial of maternity leave unlawful. (1) It shall be unlawful for an employer~~, by himself of~~ OR his agent:

(a) to terminate a woman's employment because of her pregnancy, or

(b) to refuse to grant to the employee a reasonable leave of absence for such pregnancy, or

(c) to deny to the employee, who is disabled as a result of pregnancy, any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer; PROVIDED THAT AN EMPLOYEE WHOSE PREGNANCY IS NORMAL IS NOT DISABLED WITHIN THE MEANING OF THIS ACT, BUT WOULD BE INCLUDED UNDER REGULAR MEDICAL PROGRAMS, OR

(D) TO RETALIATE AGAINST ANY EMPLOYEE WHO FILES A COMPLAINT WITH THE COMMISSIONER UNDER THE PROVISIONS OF THIS ACT, OR

(E) TO REQUIRE THAT AN EMPLOYEE TAKE A MANDATORY MATERNITY LEAVE FOR AN UNREASONABLE LENGTH OF TIME.

(2) Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

~~(3) The provisions of this section shall not apply to:~~

~~(a) termination of employment where the employee is thereupon entitled to benefits under the terms or conditions of any bona fide retirement or pension plan or collective bargaining agreement between the employer and a bona fide labor organization;~~

~~(b) operation of the terms or conditions of any bona fide retirement or pension plan;~~

~~(c) operation of the terms or conditions of any bona fide group or employee insurance plan; or~~

~~(d) operation of any bona fide apprenticeship system or plan.~~

Section 3. Complaint--how filed. A person claiming to be aggrieved by a violation of section 2 of this act may

REFERENCE BILL

make, sign, and file a verified complaint with the commissioner of labor and industry which shall state the circumstances of the violation and the particulars thereof and shall contain such other information as may be required by the commissioner. In addition, the commissioner whenever he has reason to believe that section 2 of this act has been or is being violated, may issue a complaint. WITHIN SIXTY (60) DAYS OF THE RECEIPT OF A COMPLAINT THE COMMISSIONER SHALL STATE HIS FINDINGS OF FACT AND DECISION.

If, upon all the evidence, the commissioner finds that a respondent has engaged in a violation of section 2 of this act, he shall state his findings of fact and shall order the respondent to reinstate the complainant if she so desires and to pay to the complainant the damages resulting from the violation. If, upon all the evidence, the commissioner finds that the respondent has not engaged in a violation of section 2 of this act, he shall state his findings of fact and shall dismiss the complaint.

Section 4. Enforcement. The commissioner or his authorized representatives may enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they consider appropriate, to determine whether any person has violated any provision of this act or any regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

The commissioner or his authorized representatives may administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the commissioner.

Section 5. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this act. Rulemaking under this act shall comply with the provisions of the Montana Administrative Procedure Act.

Section ~~5~~ 6. Individual action. Nothing in this act shall preclude an individual from prosecuting a private action in the district court alleging violation of the provisions of this act or any other act.

-End-